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HENDRY *v.* VIRGINIA RY. & POWER Co.

June 16, 1921.

[107 S. E. 715.]

1. Negligence (§ 122 (1)*)—Burden of Proof on Plaintiff, Relying on Last Clear Chance Rule.—The burden is on a plaintiff, who is confessedly negligent, to prove by a preponderance of the evidence that after his peril became imminent there was a clear opportunity afforded defendant to save him from the consequences of his own negligence.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 403.]

2. Street Railroads (§ 103 (2)*)—"Last Clear Chance" Rule Held Inapplicable.—Where a pedestrian, in full possession of his faculties, observes the approach of a street car, but pays no further attention to it, and, with nothing to obstruct his view, undertakes to cross the street in front of it, and is immediately struck, he is guilty of clear neglect of duty, and the fact that he is struck is convincing proof that there was no last clear chance to save him, and that his own negligence was the proximate cause of his injury.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 841.]

Error to Circuit Court of City of Norfolk.

Action by Alexander Hendry against the Virginia Railway & Power Company. Judgment for defendant, and plaintiff brings error. Affirmed.

Broudy & Peck, of Norfolk, for plaintiff in error.

W. H. Venable, of Norfolk, and *E. R. Williams*, of Richmond, for defendant in error.

HINES, Director General of Railroads, *v.* BEARD.

June 23, 1921.

[107 S. E. 717.]

1. Carriers (§ 316 (5)*)—There Is a Presumption of Negligence from Mere Fact of Derailment.—A passenger is not expected to know or required to prove the particulars of the negligence of the carrier in a derailment, and as it does not as a rule occur unless there is negligence on the part of the carrier, who is solely responsible for all instrumentalities of carriage, there is a presumption of negligence arising from the mere fact of derailment.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 705.]

2. Carriers (§ 314 (2)*)—Passenger Injured by Derailment May

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.